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FCC
Federal Communications Commission
445 12th Street, SW Room TW-B204
Washington, DC 20554

Dear FCC:

As the only two subscription-based satellite radio companies, XM and Sirius transmit music, sports programming, news, and other types of programs to a combined total of 15.4 million subscribers. At first blush, one might conclude that a combination of the only two providers of this satellite-based service would be an obvious antitrust abridgment. That's certainly the argument made by a phalanx of merger opponents, including the National Association of Broadcasters.

The reality of the relevant market, however, is more complex. That market is the entire audio entertainment universe, including terrestrial radio, Internet radio, and Internet-protocol-enabled applications, such as recent iterations of the Apple (AAPL) iPod.

In the marketplace of both satellite and terrestrially delivered radio services, XM and Sirius have less than a 4% share. The balance is held by AM and FM stations. In the broader audio entertainment market of radio and Internet-based news and entertainment, XM and Sirius have an even smaller share. When one concludes that the broader market is the proper measure, it is clear that the merger would not hinder competition.

Consider also the repeated statements by leading broadcast companies that they are in competition with satellite radio. For the past decade broadcasters have fought satellite radio, and they continue to do so. In fact, the leading opponent is the National Association of Broadcasters, the trade association for AM and FM stations, whose mere presence in this debate as a merger opponent is compelling evidence that terrestrial and satellite radio are in direct competition and are part of a unified market.

Under traditional antitrust analysis, regulators often look at potential substitutes for a product to determine whether a merger of two companies would lead to lower consumer welfare. They often ask, "How far would a person have to drive in order to find a substitute?" In the case of the XM and Sirius, consumers don't have to drive anywhere to find a competitive alternative, they just have to hit a different button on their car stereo.

When one rightly concludes that the market is broad and that the two satellite carriers hold less than a 4% market share, an antitrust green light should quickly follow.

Providing Consumers with More Choices

But the FCC has a broader public-interest screen and will question whether the merger will benefit consumers. Again, a careful review of the case favors merger approval.

Today, both companies maintain separate entertainment offerings. The merger would eliminate duplication of programming and eventually expand the spectrum for program delivery by a unified carrier, which would eventually mean more choices for consumers. XM and Sirius recently announced, for example, that they will offer eight different program packages post-merger, including several options that will enable consumers to select channels on an à la carte basis and to pay substantially less than the current subscription prices. This unprecedented offering will provide subscribers with more choices and lower prices and pave the way for a unique form of competition in the entertainment industry—one based on the individual programming preferences of listeners.

One new programming option will let subscribers choose 50 channels for just $6.99—a 46% decrease from the current standard subscription rate of $12.95 a month. The combined company also will offer several other new programming packages, including two "family-friendly" options. Those subscribers choosing one of the "family-friendly" options will be able to block adult-themed programming and, for the first time, receive a price credit.

A merged company will give subscribers additional programming options. Today, an XM subscriber can get MLB games, but not NFL games. After the merger, XM and Sirius subscribers should be able to get both MLB and NFL, both PGA and NCAA, both Oprah Winfrey and Martha Stewart.

A Boon to Public Interest Programming
As an additional benefit of the merger, the extra bandwidth that the elimination of duplication would produce will result in the offering of more public-interest programming than either XM or Sirius now offers. The combined company will be able to expand diverse programs for underserved interests, such as foreign language and religious programming.

Given the vibrancy of competition in the audio entertainment market and the substantial consumer benefits the merger will produce, the reviewing agencies should allow XM and Sirius to complete their proposed merger this year.

Sincerely,

Lillian C Schiller
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